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HOUSE OF THE PEOPLE

The following Bill was introduced in the House of the People on 18th November, 1953:—

BILL No. 53 of 1953

A Bill further to amend the Industrial Disputes Act, 1947

BE it enacted by Parliament as follows:—

1. Short title and commencement.—(1) This Act may be called the Industrial Disputes (Amendment) Act, 1953.

(2) It shall be deemed to have come into force on the 24th day of October, 1953.

2. Amendment of section 2, Act XIV of 1947.—In section 2 of the Industrial Disputes Act, 1947 (hereinafter referred to as the principal Act),—

(i) after clause (a), the following clause shall be inserted, namely:—

“(aa) ‘average pay’ means the average of the wages paid or payable to a workman—

(i) in the case of monthly paid workman, in the three complete calendar months,

(ii) in the case of weekly paid workman, in the four complete weeks,

(iii) in the case of daily paid workman, in the twelve full working days,

preceding the date on which the average pay becomes payable if the workman had worked for three complete calendar months or four complete weeks or twelve full working days, as the case may be, and where such calculation cannot be made, the average pay shall be calculated as the average of the wages paid or payable to a workman during the period he actually worked;”;

(ii) after clause (ee), the following clause shall be inserted namely:—

“(eee) ‘continuous service’ means uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorised leave or an accident or a strike which is not illegal or a cessation of work which is not due to any fault on the part of the workman;”;

(iii) after clause (kk), the following clause shall be inserted, namely:—

“(kkk) ‘lay-off’ (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or for any other similar reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched;

Explanation.—Every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours and is not given employment by the employer within two hours thereof shall be deemed to have been laid-off within the meaning of this clause;”;

(iv) after clause (o), the following clause shall be inserted, namely:—

“(oo) ‘retrenchment’ means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;”;

(v) after clause (r), the following clause shall be inserted, namely:—

“(rr) ‘wages’ means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes—

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;

(iii) any travelling concession;

but does not include—

(a) any bonus;

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;

(c) any gratuity payable on the termination of his service.”.

3. Insertion of new Chapter VA in Act XIV of 1947.—After Chapter V of the principal Act, the following Chapter shall be inserted, namely:—

“CHAPTER VA

LAY-OFF AND RETRENCHMENT

25A. Application of sections 25C to 25E.—(1) Sections 25C to 25E inclusive shall not apply—

(a) to industrial establishments in which less than fifty workmen on an average per working day have been employed in the preceding calendar month; or

(b) to industrial establishments which are of a seasonal character or in which work is performed only intermittently.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

25B. Definition of one year of continuous service.—For the purposes of sections 25C and 25E, a workman who, during a period of twelve calendar months, has actually worked in an industrial establishment for not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the establishment.

Explanation.—In computing the number of days on which a workman has actually worked in an establishment, the days on which—

(a) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (XX of 1946),

(b) he has been on leave with wages, earned in the previous year, and

(c) in the case of a female, she has been on maternity leave; so however that the total period of such maternity leave shall not exceed twelve weeks,

shall be included.

25C. Right of workmen laid-off for compensation.—(1). Whenever a workman (other than a *badli* workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid-off, he shall be paid by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent. of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid-off:

Provided that the compensation payable to a workman during any period of twelve months shall in no case be for more than forty-five days.

Explanation.—‘*Badli* workman’ means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment, but shall cease to be regarded as such for the purposes of this section, if he has completed one year of continuous service in the establishment.

25D. Duty of an employer to maintain muster rolls of workmen.—Notwithstanding that workmen in any industrial establishment have been laid-off, it shall be the duty of every employer to maintain for the purposes of this Chapter a muster roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours.

25E. Workmen not entitled to compensation in certain cases.—No compensation shall be paid to a workman who has been laid-off—

(i) if he refuses to accept any alternative employment in the same establishment from which he has been laid-off, if, in the opinion of the employer, such alternative employment does not call for any special skill or previous experience and can be done by the workman, provided that the wages which would normally have been paid to the workman are offered for the alternative employment also;

(ii) if he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day;

(iii) if he works elsewhere, for the days on which he so works;

(iv) if such laying-off is due to a strike or slowing-down of production on the part of workmen in another part of the establishment.

25F. Conditions precedent to retrenchment of workmen.—No workman who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the

period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) the workman has been paid, at the time of retrenchment, gratuity which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government.

25G. *Procedure for retrenchment.*—Where any workman, who is a citizen of India, is to be retrenched and he belongs to a particular class of workmen, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that class, unless for reasons to be recorded the employer retrenches any other workman.

25H. *Re-employment of retrenched workmen.*—Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen to offer themselves for re-employment, and the retrenched workmen who offer themselves for re-employment shall have preference over other persons.

25I. *Effect of laws inconsistent with this Chapter.*—(1) The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law [including standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (XX of 1946)]:

Provided that nothing contained in this Act shall have effect to derogate from any right which a workman has under any award for the time being in operation or any contract with the employer.

(2) For the removal of doubts it is hereby declared that any industrial dispute relating to any of the matters referred to in this Chapter shall be dealt with in accordance with the provisions of this Act and not in accordance with any other law."

4. Repeal of Ordinance 5 of 1953.—The Industrial Disputes (Amendment) Ordinance, 1953 (5 of 1953) is hereby repealed.

STATEMENT OF OBJECTS AND REASONS

The Industrial Disputes (Amendment) Bill, 1953 seeks to provide for payment of compensation to workmen in the event of their lay-off or retrenchment. The provisions included in the Bill are not new and were discussed at various tripartite meetings. Those relating to lay-off are based on an agreement entered into between the representatives of employers and workers who attended the 13th

session of the Standing Labour Committee. In regard to retrenchment, the Bill provides that a workman who has been in continuous employment for not less than one year under an employer shall not be retrenched until he has been given one month's notice in writing or one month's wages in lieu of such notice and also a gratuity calculated at 15 days' average pay for every completed year of service or any part thereof in excess of six months. A similar provision was included in the Labour Relations Bill, 1950, which has since lapsed. Though compensation on the lines provided for in the Bill is given by all progressive employers, it is felt that a common standard should be set for all employers.

V. V. GIRI.

NEW DELHI;

The 16th November, 1953.

M. N. KAUL,
Secretary.